ANNUAL REPORT

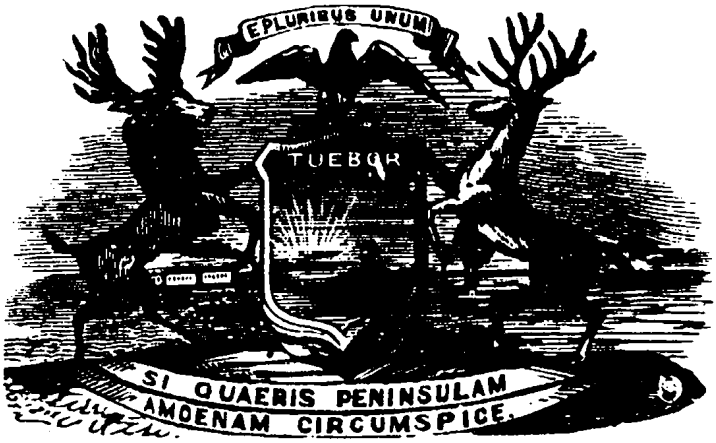
OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1849.



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REPORT.

ATTORNEY GENERAL'S OFFICE,
January 1st, 1850.

To the Legislature of the State of Michigan:

The undersigned has the honor to submit to the Legislature the following as his official report for the year which has just expired.

Since the date of my last report, the cases of the People *vs.* Richards & Pelton, and the People *vs.* Gorman, referred to in that report, have both been decided by the Supreme Court, and the proceedings of the courts below sustained.

In the first named case, after the decision of the Supreme Court, the Circuit Court for Hillsdale county proceeded to pass sentence upon the defendants. The cause has again been removed to the Supreme Court on the ground of error in the sentence. It will probably be disposed of at the present term of that court.

Since my last report, informations in the nature of writs of *quo warranto* have been filed in four instances, to inquire by what right certain persons assume to claim and exercise certain offices in this State. The offices involved are those of Judges of Probate of the counties of Washtenaw and Genesee respectively; that of Sheriff of Cass county, and that of a township office in Hillsdale county. None of these cases have yet been disposed of.

In the case of the People *vs.* Hollywood, argued in the Supreme Court last winter, the judgment of the Circuit Court for Washtenaw county was reversed. This was a case in which the defendant was convicted of forgery.

The case of Henry B. Lathrop *vs.* the Agent of the State Prison, referred to in my last report, has been removed to the Supreme Court by writ of error, and will be argued at its present term in the city of Detroit.

The case of the People *vs.* Doe, where the defendant was convicted of murder before the County Court of St. Joseph county, and which was taken by the defendant to the Supreme Court by writ of error, was argued at the last October term of that court, but judgment has not yet been pronounced.

A suit has been commenced by me against the Detroit & Pontiac Railroad Company, to test its liability to pay the specific State tax, provided for by chapter twenty-one of the revised statutes of 1846. This company insists that this law, if applied to them, would involve a change of their charter, and would therefore be unconstitutional. The case will be submitted to the Supreme Court, and I have no doubt will be decided at its present term.

It will be recollected that there were a large number of bonds and mortgages executed by various persons, in 1838, to Henry Howard, State Treasurer, to secure the payment of the principal and interest of the loan to the Ypsilanti & Tecumseh Railroad Company. Several years ago, the Hon. Henry N. Walker, then Attorney General, caused a bill to be filed in the name of George Redfield, then State Treasurer, against Augustus Porter, for the foreclosure of one of those mortgages. To this bill the defendant interposed a demurrer, for want of sufficient parties, and for want of equity in the bill. Nothing further was done in the cause until at the last term of the old Court of Chancery, when I caused the matter to be brought on for argument before Judge Wing, sitting as Chancellor. A very large amount of property is involved in these securities, and nearly half a dozen of the most eminent lawyers in the State have been retained by some of the various persons interested in resisting the enforcement of the mortgages. Under these circumstances, I last winter suggested to Gov. Ransom

the propriety of obtaining the aid of special counsel. With his approbation I retained the Hon. Daniel Goodwin, whose eminent standing and recognized acquirements as a lawyer, will be the most ample guarantee to the people of this State that nothing will be wanting in the proper maintenance of their rights.

Without stating here the various points made by the mortgagees, it will suffice to say that their defense calls in question the validity of all these mortgages. It seems certain that the rights of the State will be resisted to the last extremity, and that every resource of professional skill and learning will be exhausted to embarrass, delay, and if possible, defeat the suit. On the other hand, no effort will be spared to effect a speedy and complete maintenance of the claim of the State; and the undersigned may be permitted to say, that though the result may be considerably delayed, he can at present see no good reason why it should not be entirely favorable to the State.

The points raised by the demurrer were argued at considerable length, and the cause is still under advisement by the court.

The correspondence of the office during the past year with county and township officers has, as in the previous year been fully large. Though not required by law to do so, yet I have thought proper, in all cases where the advice asked related to the ministerial duties of their offices, to give them my official opinion.

Under the law of last winter the undersigned caused blanks for the official returns of the several Prosecuting Attorneys to be prepared and sent to each of those officers. The result has been favorable. The returns are much more uniform in their character than they have previously been, and I am satisfied that the information given is much more accurate. I am not able to exhibit in the abstract of their returns which is annexed, all of the particulars set forth in the original returns on file in this office.

I have thought proper to publish in full the communication addressed to me by the Prosecuting Attorney for the county of Wayne, and respectfully call the attention of the Legislalature to the facts therein disclosed. I also refer to my last annual report, by which it will appear that the evils complained of have previously attracted the attention of those having charge of the public prosecutions of that county. I will also add that so heavy have become the public burthens arising from the present mode of administration of the laws relating to crimes, that the board of supervisors of the county have called my personal attention to the subject, and requested that it should be brought to your notice. It will be observed that "exhibit B," annexed to the report of said Prosecuting Attorney is made up solely of examinations made in the city of Detroit. I think that the suggestions of that officer are worthy of grave consideration.

No reports have been received at this office from the counties of Clinton, Chippewa, Genesee, Ionia, Kalamazoo, Macinac, and Ottawa.

All of which is respectfully submitted,

GEO. V. N. LOTHROP,

Attorney General.